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No. 16-466

In the Supreme Court of the United States

BRISTOL-MYERS SQUIBB COMPANY,

Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN FRANCISCO, et al.,

Respondents.

On Writ of Certiorari to the Supreme Court of California

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, CALIFORNIA CHAMBER OF COMMERCE, AMERICAN TORT REFORM ASSOCIATION, AND CIVIL JUSTICE ASSOCIATION OF CALIFORNIA AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, CALIFORNIA CHAMBER OF COMMERCE, AMERICAN TORT REFORM ASSOCIATION, AND CIVIL JUSTICE ASSOCIATION OF CALIFORNIA AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

INTEREST OF THE *AMICI CURIAE*

The Chamber of Commerce of the United States of America is the world's largest business federation, representing 300,000 direct members and indirectly representing the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. The Chamber represents the interests of its members in matters before the courts, Congress, and the Executive Branch. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of vital concern to the Nation's business community, and has participated as *amicus curiae* in numerous cases addressing jurisdictional issues.[1]

Many Chamber members conduct business in States other than their State of incorporation and State of principal place of business—*i.e.*, the forums in which they are subject to general personal jurisdiction, see *Daimler AG* v. *Bauman*, 134 S. Ct. 746, 760 (2014). They therefore have a substantial inter-

[1] Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici*, their members, and their counsel made a monetary contribution to its preparation or submission. The parties' blanket letters of consent to the filing of *amicus* briefs have been filed with the Clerk's office.

est in the rules governing the extent to which a State can subject nonresident corporations to specific personal jurisdiction.

The California Chamber of Commerce ("CalChamber") is a nonprofit business association with over 14,000 members, both individual and corporate, representing virtually every economic interest in the State. For over 125 years, CalChamber has been the voice of California business. While CalChamber represents several of the largest corporations in California, seventy-five percent of its members have 100 or fewer employees. CalChamber acts on behalf of the business community to improve the State's economic and employment climate by representing business on a broad range of legislative, regulatory, and legal issues.

Founded in 1986, American Tort Reform Association ("ATRA") is a broad-based coalition of businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation. For over two decades, ATRA has filed *amicus* briefs in cases that have addressed important liability issues.

The Civil Justice Association of California ("CJAC") is a non-profit organization of businesses, professional associations and financial institutions dedicated to educating the public about ways to make our civil liability laws more fair, economical, and certain. Toward this end, CJAC regularly petitions government for redress when it comes to determining who pays, how much, and to whom when the conduct of some occasions harm to others.

CJAC's efforts include participation as *amicus curiae* in cases raising a variety of liability issues.

Subjecting corporations to specific jurisdiction for claims that have nothing to do with the forum State would eviscerate the due process limits on personal jurisdiction recognized by this Court in numerous cases dating back to *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945)—and could well expose corporations that do business nationwide to what effectively amounts to general personal jurisdiction in all fifty States.

Amici file this brief to explain that the holding below is irreconcilable with this Court's precedents and that the California Supreme Court's expansive approach to specific jurisdiction would impose unfair burdens on businesses and encourage forum-shopping that undermines the integrity of the judicial system.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court has recognized several times in recent years that "'specific jurisdiction has become the centerpiece of modern [personal] jurisdiction theory, while general jurisdiction [has played] a reduced role.'" *Daimler*, 134 S. Ct. at 755 (quoting *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 564 U.S. 915, 925 (2011)). The Court's decision in *Daimler*, reaffirming the limited availability of general jurisdiction, heightened the focus on standards governing specific jurisdiction.

Some lower courts have responded by stretching specific jurisdiction far beyond the bounds established by this Court's precedents, applying the "specific jurisdiction" label to what is in effect a new form

of general jurisdiction. The ruling below is an example of that phenomenon.

The claims of the 575 out-of-State plaintiffs in this case have no connection to California—the drug at issue (Plavix) was not manufactured there, the plaintiffs did not buy it there, the plaintiffs were not injured there; put simply, absolutely nothing relevant to those claims happened in California. Unquestionably, if the out-of-State plaintiffs' claims had been filed individually, or as a mass action that did not include California plaintiffs, due process principles would bar California from asserting personal jurisdiction over petitioner.

But the California Supreme Court majority concluded that subjecting petitioner to suit in California on those claims would not violate due process, based on two factors: (1) the majority's conclusion that petitioner's contacts with California were part of its nationwide marketing and sales efforts, which also involved separate, but similar, contacts with the States of the non-California plaintiffs—and that the California contacts were for that reason sufficiently "suit-related" to the out-of-State claims; and (2) the determination that joinder of the 575 out-of-State claims to the claims of 86 in-State plaintiffs made "reasonable" the assertion of jurisdiction with respect to the out-of-State claims.

That reasoning is bizarre. A defendant's contacts with a forum cannot be deemed "suit-related" when, as here, they are wholly unnecessary to the plaintiff's claim—such that the plaintiff could still prevail on his or her claim if the defendant's contacts with the forum State did not exist. And the addition of in-State plaintiffs cannot magically render "reasonable" the assertion of jurisdiction with respect to other,

separate claims asserted by out-of-State plaintiffs with separate claims.

Moreover, the legal theory created by the majority below has no logical stopping point. If it were correct, out-of-State plaintiffs could outnumber in-State plaintiffs by 50:1 or even 500:1 and still invoke specific jurisdiction. Indeed, it is possible that out-of-State plaintiffs would be able to sue on their own, without joining any in-State plaintiffs, simply by making the allegations of parallel in-State and out-of-State conduct relied upon by the majority below here.

Finally, the lower court's theory is not tied to facts unique to California. It would allow each of the fifty States to exercise personal jurisdiction over a defendant with respect to every claim—tort, contract, or statutory—no matter where the plaintiff resides or was injured or where the conduct occurred. All that is required is that (a) the out-of-State plaintiffs' claims rest in some part on conduct that paralleled the defendant's conduct in the forum State; and (b) at least one forum State resident is willing to file a similar claim.

Not surprisingly, this new form of jurisdiction—much closer in real-world effect to "general" than to "specific"—is squarely inconsistent with the holdings and rationale of this Court's specific jurisdiction decisions.

First, this Court holds that specific jurisdiction must be based on purposeful contacts between the defendant and forum State that gave rise to the plaintiff's claim. It is "the defendant's *suit-related* conduct [that] must create a substantial connection with the forum State." *Walden* v. *Fiore*, 134 S. Ct.

1115, 1121 (2014) (emphasis added). This requirement of "relatedness" (*Burnham* v. *Superior Court of Cal., Cty. of Marin*, 495 U.S. 604, 621 (1990)) is necessary to ensure that a defendant is subject to specific jurisdiction in a forum only to the extent that it has engaged in activity there.

The majority below applied a "sliding scale approach to specific jurisdiction," under which "the more wide ranging the defendant's forum contacts, the more readily" the court presumes a "connection between the forum contacts and the claim"—even when no such connection actually exists. Pet. App. 32a (internal quotation marks omitted). But there is no basis in this Court's decisions for allowing a presumption to take the place of a contact by the defendant with the forum that gives rise to the plaintiff's claim.

Indeed, such a presumption is entirely inconsistent with the rationale underlying specific jurisdiction: namely, that it is fair to exercise jurisdiction over a defendant with respect to claims arising out of the defendant's forum contacts because the defendant has submitted to the State's regulation by engaging in that specific activity in the State.

Second, by exposing product manufacturers to de facto general jurisdiction wherever their products are sold, the sliding-scale approach would virtually eliminate defendants' ability to predict where they might face litigation, raising companies' costs and burdening interstate commerce. It would open the door to untrammeled forum-shopping, flooding the dockets of plaintiff-friendly "magnet" jurisdictions.

Third, the sliding-scale approach conflicts with core federalism principles. Courts in magnet jurisdic-

tions would frequently be adjudicating claims with *no* connection to the forum. The approach would therefore lead to greater interference by forum States in other States' affairs—exactly the opposite of what specific jurisdiction seeks to accomplish.

For all of these reasons, the Court should reaffirm that specific jurisdiction does not apply when the plaintiff's claim arose independent from the defendant's forum contacts, and therefore reverse the decision below.

ARGUMENT

Settled Due Process Principles Bar California From Subjecting Petitioner To Personal Jurisdiction With Respect To The Out-Of-State Plaintiffs' Claims.

International Shoe Co. v. *Washington*, 326 U.S. 310 (1945), holds "that a State may authorize its courts to exercise personal jurisdiction over an out-of-state defendant if the defendant has 'certain minimum contacts with [the State] such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."'" *Goodyear*, 564 U.S. at 923 (quoting *Int'l Shoe*, 326 U.S. at 316).

In applying this standard, the Court has recognized two categories of personal jurisdiction: "general or all-purpose jurisdiction, and specific or case-linked jurisdiction." *Goodyear*, 564 U.S. at 919. General jurisdiction enables a State to adjudicate "any and all claims against" a corporation, because the corporation's "affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State." *Ibid.*; accord *Daimler*, 134 S. Ct. at 754.

"Specific jurisdiction, on the other hand, depends on an 'affiliatio[n] between the forum and the underlying controversy,' principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Goodyear*, 564 U.S. at 919; accord *Daimler*, 134 S. Ct. at 754.

In every case in which this Court has upheld an exercise of specific jurisdiction, the defendant's purposeful contacts with the forum State have given rise to the claim to be adjudicated. See *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 479 (1985) (noting that the "franchise dispute grew directly out of" the defendant's activities in Florida); *Calder* v. *Jones*, 465 U.S. 783, 789 (1984) (defendants' actions were "expressly aimed at California"); *Keeton* v. *Hustler Magazine, Inc.*, 465 U.S. 770, 780 (1984) (claims "ar[o]se[] out of the very activity being conducted" by the defendant in New Hampshire); *McGee* v. *Int'l Life Ins. Co.*, 355 U.S. 220, 223 (1957) (suit "based on a contract" performed in California); *Int'l Shoe*, 326 U.S. at 320 ("The obligation which [was] here sued upon arose out of th[e] [defendant's] very activities" in Washington).

The majority below expanded specific jurisdiction to encompass situations in which the claim does not arise from the defendant's contacts with the forum—indeed, where the claim arose entirely independent of those contacts. That dramatic expansion of specific jurisdiction is precluded by this Court's precedents and would detach specific jurisdiction from the principles on which it rests. It also would trench on important federalism interests, eliminate defendants' ability to structure their primary conduct to provide some predictability regarding the conduct that may

subject them to suit, and open the door to rampant forum-shopping.

A. Specific Jurisdiction Is Not Available When The Claim Arose Independent Of The Defendant's Purposeful Contacts With The Forum.

The fundamental due process requirement for exercising specific jurisdiction is a connection between the claim and the defendant's contacts with the forum State. It necessarily follows that specific jurisdiction is *not* available when the plaintiff's claim arose *independently* from the defendant's forum contacts—and that the California court's sliding-scale approach should be rejected.

1. This Court's precedents preclude the exercise of specific jurisdiction when there is no connection between the plaintiff's claim and the defendant's forum contacts.

Specific jurisdiction requires that "the defendant's suit-related conduct must create a substantial connection with the forum State." *Walden*, 134 S. Ct. at 1121. "'[T]he commission of some single or occasional acts of the corporate agent in a state' may sometimes be enough to subject the corporation to jurisdiction in that State's tribunals with respect to suits relating to that in-state activity." *Daimler*, 134 S. Ct. at 754 (quoting *Int'l Shoe*, 326 U.S. at 318).

The Court has used the phrase "aris[es] out of or relate[s] to the defendant's contacts with the forum" to describe specific jurisdiction. *Helicopteros Nacionales de Colombia, S. A.* v. *Hall*, 466 U.S. 408, 414, n. 8 (1984); see also *Walden*, 134 S. Ct. at 1122 ("[T]he relationship must arise out of contacts that

the 'defendant *himself* creates with the forum State.").

The out-of-State plaintiffs' claims do not arise out of petitioner's contacts with California. Pet. App. 5a, 33a-34a (the drug was not manufactured in California, not purchased in California, and these plaintiffs do not have any connection to or suffer injury in California). The question here, therefore, is the extent to which the Court's use of "relates" expands the scope of specific jurisdiction—in particular, whether it extends specific jurisdiction to situations, as here, in which the claim arose completely independent of the defendant's purposeful forum contacts.

The Court has upheld specific jurisdiction only when the claim arose from the defendant's forum contacts (see page 8, *supra*) and rejected it when there was no argument that the claim was in any way related to the forum contacts. See *Burger King*, 471 U.S. at 479-80; *Calder*, 465 U.S. at 789; *Keeton*, 465 U.S. at 780; *McGee*, 355 U.S. at 223; *Int'l Shoe*, 326 U.S. at 320; contra *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 299 (1980); *Kulko* v. *Superior Court*, 436 U.S. 84, 97 (1978); *Hanson* v. *Denckla*, 357 U.S. 235, 251 (1958).

Moreover, the Court's consistent justification for specific jurisdiction makes clear that it cannot apply when the claim arose independent of the defendant's forum contacts.

Specific jurisdiction rests on the principle that "the commission of certain 'single or occasional acts' in a State may be sufficient to render a corporation answerable in that State with respect to those acts, though not with respect to matters unrelated to the

forum connections." *Goodyear*, 564 U.S. at 923 (quoting *Int'l Shoe*, 326 U.S. at 318).

"[T]he privilege of conducting activities within a state * * * may give rise to obligations; and, so far as those *obligations arise out of or are connected with the activities within the state*, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue." *Int'l Shoe*, 326 U.S. at 319 (emphasis added).

Applying that reasoning, the *International Shoe* Court concluded that Washington's exercise of specific jurisdiction over the defendant was permissible because the defendant had engaged in activities within the State and "[t]he obligation which is here sued upon arose out of those very activities," making it "reasonable and just * * * to permit the state to enforce *the obligations which [the defendant] ha[d] incurred there.*" *Id.* at 320 (emphasis added).

This Court's subsequent decisions consistently reaffirm that specific jurisdiction is justified because the plaintiff's claim is tied to the defendant's activity in the forum State.

Burger King set forth several "reasons why a forum legitimately may exercise personal jurisdiction over a nonresident who 'purposefully directs' his activities toward forum residents": first, "[a] State generally has a 'manifest interest' in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors"; and, second, "where individuals 'purposefully derive benefit' from their interstate activities, it may well be unfair to allow them to escape *having to account in other States for consequences that arise proximately from such activi-*

ties." 471 U.S. at 473-474 (emphasis added; citation omitted).

In *J. McIntyre Machinery, Ltd.* v. *Nicastro*, the plurality opinion explained that specific jurisdiction involves a "more limited form of submission to a State's authority" than general jurisdiction, because the defendant subjects itself "to the judicial power of an otherwise foreign sovereign *to the extent that power is exercised in connection with the defendant's activities touching on the State*." 564 U.S. 873, 881 (2011) (emphasis added).

Next, in *Goodyear* (decided on the same day as *Nicastro*), the Court explained that specific jurisdiction "depends on an affiliation between the forum and the underlying controversy, principally, *activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation*." *Goodyear*, 564 U.S. at 919 (emphasis added; brackets and internal quotation marks omitted). It is therefore "confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction." *Ibid.* (internal quotation marks omitted).

Specific jurisdiction therefore exists only where a defendant engages in "continuous and systematic" activity in the State "*and that activity gave rise to the episode-in-suit*" (*id.* at 923 (quoting *Int'l Shoe*, 326 U.S. at 317)), or where the defendant commits "'single or occasional acts' in a State [that are] sufficient to render [it] answerable in that State *with respect to those acts, though not with respect to matters unrelated* to the forum connections." *Ibid.* (emphasis added) (quoting *Int'l Shoe*, 326 U.S. at 318).

Most recently, in *Walden*, the Court explained that specific jurisdiction—which it characterized as "case-linked"—"'depends on an "affiliatio[n] between the forum and the underlying controversy'" (i.e., an 'activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation')." *Walden*, 134 S. Ct. at 1121 n.6 (quoting *Goodyear*, 564 U.S. at 919).

The Court's consistent explanations of the principle undergirding specific jurisdiction make clear that a forum State's assertion of this authority is justified by the forum State's legitimate interest in regulating the activity on which the particular plaintiff's claim is based. That rationale is wholly inapplicable when, as here, the plaintiff's claim arose independent of the defendant's forum state activity. In that circumstance, the defendant has done nothing to submit to regulation by the forum State and the fairness rationale that is essential to specific jurisdiction is lacking.

For this reason, numerous lower courts have held that specific jurisdiction is not available where the plaintiff's claim arose independent from the defendant's forum contacts. See, *e.g.*, *Beydoun* v. *Wataniya Rests. Holding, Q.S.C.*, 768 F.3d 499, 508 (6th Cir. 2014); *Consulting Engineers Corp.* v. *Geometric Ltd.*, 561 F.3d 273, 278-79 (4th Cir. 2009); *Oldfield* v. *Pueblo De Bahia Lora, S.A.*, 558 F.3d 1210, 1222-23 (11th Cir. 2009); *Menken* v. *Emm*, 503 F.3d 1050, 1058 (9th Cir. 2007); *O'Connor* v. *Sandy Lane Hotel Co., Ltd.*, 496 F.3d 312, 322 (3d Cir. 2007); *Harlow* v. *Children's Hosp.*, 432 F.3d 50, 61 (1st Cir. 2005); see also *Glater* v. *Eli Lilly & Co.*, 744 F.2d 213, 216 (1st Cir. 1984).

2. The California court's "sliding scale" standard effectively transforms specific jurisdiction into an amorphous new form of general jurisdiction.

The novel approach to specific jurisdiction adopted by the majority below is not only precluded by this Court's precedents—it also would greatly expand specific jurisdiction, into a junior form of general jurisdiction, by replacing an objective limitation on specific jurisdiction with an ill-defined "reasonableness" inquiry.

The California court recognized that specific jurisdiction requires (a) purposeful availment by the defendant of the opportunity to do business in California; (b) that the plaintiff's claim arise from or be related to the defendant's purposeful contacts with the forum; and (c) that the exercise of jurisdiction be reasonable. Pet. App. 20a-21a.

With respect to the first two inquiries, the lower court concluded:

- Petitioner "sold Plavix to both the California plaintiffs and the nonresident plaintiffs as part of a common nationwide course of distribution," and petitioner's "nationwide marketing, promotion, and distribution of Plavix created a substantial nexus between the nonresident plaintiffs' claims and the company's contacts in California concerning Plavix." Pet. App. 28a.
- "Although there is no claim that Plavix itself was designed and developed in [petitioner's California] facilities, the fact that the company engages in research and product development in these California facilities is relat-

> ed to plaintiffs' claims that [petitioner] engaged in a course of negligent research and design that led to their injuries, even if those claims do not arise out of [petitioner's] research conduct in th[e] state." *Id.* at 29a.

The court labeled an "invalid assumption" the dissent's contention "that [petitioner's] forum contacts must bear some substantive legal relevance to the nonresident plaintiffs' claims." *Id.* at 30a. It held instead that, under its "sliding scale approach" (*id.* at 32a), a plaintiff's claim "need not arise directly from the defendant's forum contacts" or be causally linked to those contacts in any way. *Id.* at 22a. Under that approach, "the more wide ranging the defendant's forum contacts" in general, "the more readily" the court will find a sufficient "connection between the forum contacts and the claim." *Id.* at 32a.

The forum contacts discussed above were "substantially connected to the nonresident plaintiffs' claims" because the contacts were "part of the nationwide marketing and distribution of Plavix, a drug [petitioner] researched and developed, that gave rise to all the plaintiffs' claims." Pet. App. 30a.

The California court then turned to the "reasonableness" inquiry, considering whether California had an interest in adjudicating the out-of-State plaintiffs' claims, whether petitioner would bear a disproportionate burden in defending the out-of-State claims, and whether California should expend its judicial resources on those claims. It held that none of these factors rendered the exercise of jurisdiction unreasonable. Pet. App. 36a, 37a-44a.

This "test" would open the door to extraordinarily expansive specific jurisdiction, for four reasons.

First, the approach to finding a sufficient connection between the defendant's forum contacts and the plaintiff's claim is entirely standardless. If the plaintiff's claim need not be dependent in any way on the defendant's forum State activity—and may be totally independent of all of the in-forum activity—"connection" loses all meaning. That is illustrated by the finding below that petitioner's research facilities within California constitute a relevant connection to the State, even though those facilities had nothing to do with the development of the drug in question.

The lower court's acknowledgment that "the more wide-ranging" the contacts, the more readily a sufficient connection will be found, confirms that this analysis has nothing to do with suit-related conduct and instead is a wholly-subjective principle for inflating the scope of specific jurisdiction.

Second, the lower court's conclusion here rests principally on its determination that petitioner's alleged in-State conduct paralleled its alleged conduct in other States. Upholding that theory alone would expand specific jurisdiction beyond recognition.

Any out-of-State plaintiff filing suit in California could point to the fact that a product is sold in California—nearly all products sold nationwide are—as a basis for adjudicating disputes over the labeling of the same product when it is sold in other States—on the theory that the defendant's "common nationwide" labeling permits that result. And the same would be true of services offered nationwide.

A defendant would therefore be subject to a variant of general jurisdiction in every State in which they sell their products. Any plaintiff in the country who purchased the product could bring suit in any

State where the product was sold, simply by alleging that the manufacturer's distribution of the product in the forum paralleled its distribution of the product elsewhere.

Third, the "sliding scale" approach deprives defendants of the ability to raise the defense of personal jurisdiction with respect to individual plaintiffs.

If suit was brought in California by a lone plaintiff, a Maine resident who alleged that she was injured by taking petitioner's drug in Maine, it is highly unlikely as a practical matter that the California courts would have exercised personal jurisdiction over petitioner (even though the sliding-scale approach theoretically permits that result). But in this case, the court below reached the opposite result because a large number of plaintiffs from inside and outside the State had been gathered together—apparently reasoning that it was more efficient, and therefore "reasonable," to litigate the in-State and out-of-State claims together. Pet. App. 37a-38a.

Procedural rules for joining claims together—whether through mass joinder or the class device—cannot abridge a defendant's due process rights to "present every available defense" to each plaintiff's claims. *Lindsey* v. *Normet*, 405 U.S. 56, 66 (1972) (quoting *Am. Sur. Co.* v. *Baldwin*, 287 U.S. 156, 168 (1932)). Thus, for example, in *Wal-Mart Stores, Inc.* v. *Dukes*, this Court explained that "[b]ecause the Rules Enabling Act forbids interpreting Rule 23 to 'abridge, enlarge or modify any substantive right,' a class cannot be certified on the premise that [a defendant] will not be entitled to litigate its statutory defenses to individual claims." 564 U.S. 338, 367 (2011) (citations omitted) (citing 28 U.S.C. § 2072(b)). And in *Tyson Foods, Inc.* v. *Bouaphakeo*, 136 S. Ct.

1036, 1050 (2016), the Court acknowledged the "great importance" of the question whether uninjured plaintiffs (who could not presumably sue on their own) could recover in a class action. See also *id.* at 1053 (Roberts, C.J., concurring) ("Article III does not give federal courts the power to order relief to any uninjured plaintiff, class action or not.").

These principles—rooted in due process—apply irrespective of whether it is thought to be more "efficient" (Pet. App. 39a) to join claims together in a single lawsuit, or a single forum. Due process calls for the balance between fundamental fairness and efficiency to be struck in favor of the former, not the latter. As this Court has put it in another context, "Procedural due process is not intended to promote efficiency or accommodate all possible interests: it is intended to protect the particular interests of the person" whose rights are at stake. *Fuentes* v. *Shevin*, 407 U.S. 67, 92 n.22 (1972); cf. also, *e.g.*, *Stanley* v. *Illinois*, 405 U.S. 645, 656 (1972) ("[T]he Constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency.") (footnote omitted).

Certainly out-of-State plaintiffs have ample forums available in which to bring their claims, including the States in which petitioner is subject to general jurisdiction and those where the alleged injuries occurred. Whatever "efficien[cy]" is gained by allowing them to sue in California is far outweighed by the unfairness of subjecting petitioner to specific jurisdiction on claims that have nothing to do with the State.

Fourth, the lower court purported to employ the "reasonableness" requirement as a check on overly-expansive specific jurisdiction. But it concluded broadly that as long as the defendant had to litigate claims of California plaintiffs, there was no basis for holding it unreasonable to add out-of-State plaintiffs' claims. The "reasonableness" check is therefore no limitation at all.

Indeed, while this case involves both in-State and out-of-State plaintiffs, nothing in the sliding-scale approach requires there to be any in-State plaintiffs *at all*, as long as the defendant has engaged in conduct in the State that parallels the out-of-State conduct that allegedly caused an out-of-State injury. Permitting suits to be brought on a specific jurisdiction theory—even when *all* (or nearly all) of the plaintiffs are out-of-State and have claims based on out-of-State conduct in effect "reintroduce[s] general jurisdiction by another name"—and on a massive scale. Linda J. Silberman, *The End of Another Era: Reflections on* Daimler *and Its Implications for Judicial Jurisdiction in the United States*, 19 Lewis & Clark L. Rev. 675, 687 (2015).

Thus, as the dissenting Justices observed below, the sliding-scale approach completely "undoes" the cabined framework that this Court "wrought in *Daimler*" "under the rubric of specific jurisdiction." Pet. App. 50a-51a (Werdegar, J., dissenting).

That conclusion does not deprive plaintiffs of a choice of several different places in which to bring their claims. A plaintiff may sue in the defendant's State of incorporation and State of principal place of business, as well as in other States, such as those in which the plaintiff resides and was injured—as long as the defendant's contacts with the latter States are

found to have the requisite connection to the plaintiff's claim.[2]

What a plaintiff may not do is invoke a specific jurisdiction theory to justify suit in a State in which the defendant's contacts had nothing to do with the plaintiff's own claim.

B. The "Sliding Scale" Approach Is Unfair To Litigants And Would Harm The Court System.

The sliding-scale approach not only violates the core principles of specific jurisdiction; it also would impose serious burdens on the business community, the courts, and the federal system. These burdens are an additional, compelling reason that the lower court's holding should be reversed.

1. A potential defendant would be wholly unable to predict where litigation might be brought—which would harm the entire economy.

This Court has long recognized that the limitations on specific jurisdiction are meant to "give[] a degree of predictability to the legal system that allow[] potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen*, 444 U.S. at 297. Spe-

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[2] As petitioner explains (Br. 37), the lower courts are divided with respect to the precise causal link between the plaintiff's claim and the defendant's forum contacts required to permit the exercise of specific jurisdiction. We agree with petitioner that proximate cause is the appropriate standard, but given the absence of any causal link here the Court is not obliged to resolve that question in order to reverse the judgment below.

cific jurisdiction's requirement of some link between the plaintiff's claim and the defendant's forum-related contacts assures defendants that they have a "due process right not to be subjected to judgment in [the] courts" of a State other than their home State, or States, unless they have affirmatively established contacts with the State itself and the claims at issue relate to those contacts. *Nicastro*, 564 U.S. at 881; see also *Walden*, 134 S. Ct. at 1123.

This "[p]redictability is valuable to corporations making business and investment decisions." *Hertz Corp.* v. *Friend*, 559 U.S. 77, 94 (2010) (rejecting interpretation of "principal place of business" that would render many large companies citizens of California). A company "knows that under the relationship standard, its potential for suit [in a State] will be limited to suits concerning the activities that it initiates in the state." Carol Rice Andrews, *The Personal Jurisdiction Problem Overlooked in the National Debate About "Class Action Fairness"*, 58 S.M.U. L. Rev. 1313, 1346 (2005); cf., *e.g.*, *World-Wide Volkswagen*, 444 U.S. at 297 (noting that a defendant that has "clear notice that it is subject to suit" in a forum "can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State").

Extending specific jurisdiction to claims that arose independent of the defendant's forum contacts would eliminate the predictability that specific jurisdiction rules are intended to provide. If plaintiffs could bring claims from all over the country in any State as long as they alleged a "common nationwide course of distribution," Pet. App. 28a, businesses' ability to predict where they are subject to specific

jurisdiction—and tailor their conduct to limit their exposure to jurisdiction—would be drastically reduced. A "company's potential liabilities [could not] be forecast from its [in-]state activities." *Id.* at 83a (Werdegar, J., dissenting). Indeed, a company that sold products or services nationwide would have no way of avoiding being trapped in mass actions in which most (if not all) of the claims arise from out-of-State conduct—no matter how "distant or inconvenient" the forum State for adjudicating those claims. See *World-Wide Volkswagen*, 444 U.S. at 292.

Applying specific jurisdiction in such an unpredictable and indiscriminate manner would be unfair to defendants and undermine the clarity that due process requires of jurisdictional rules. *See Nicastro*, 564 U.S. at 885 (explaining that "[j]urisdictional rules should avoid the[] costs [of unpredictability] whenever possible").[3]

The harmful consequences of this unpredictability, moreover, would not be limited to businesses: consumers would ultimately bear some of the costs as well. The legal costs imposed on businesses whenever they are forced to litigate high-stakes cases in

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[3] Notably, the European Union's regulation on jurisdiction provides for specific ("special") jurisdiction in tort cases only in "the courts for the place where the harmful event occurred." 2012 O.J. (L 351) 7 (ch. 2, § 2, art. 7(2)). The regulation makes only a limited exception for multi-*defendant* cases, in which suit is permitted where any defendant is domiciled as a means of avoiding "irreconcilable judgments resulting from separate proceedings." *Id.* at 8 (ch. § 2, art. 8(1)). The sliding-scale approach, therefore, would put the United States out of step with the straightforward approach that other nations use to provide defendants with "legal certainty" about their exposure to tort litigation in forums other than their domicile. *Id.* at 3.

unexpected forums would surely increase in an environment where a product liability claim against a nationwide manufacturer could essentially be brought anywhere. And some of that cost increase would invariably be borne by consumers in the form of higher prices.

The California court's approach to specific jurisdiction, if upheld, also could well discourage businesses from selling their products in magnet jurisdictions in the first place. In *Goodyear*, where a State court had sought to exercise general jurisdiction based on goods' having entered the State in the stream of commerce, the Solicitor General rightly warned that exercising general jurisdiction on those grounds "creates an obvious disincentive for foreign manufacturers to allow their goods to be distributed in the United States. Any resulting diminution in import traffic would harm United States residents, who would otherwise benefit from a broader range of available goods." Br. of U.S. as Amicus Curiae Supporting Petitioners at 30-31, *Goodyear* (No. 10-76).

So too here: by exposing defendants to the equivalent of general jurisdiction in every State where their products and services are sold, the sliding-scale approach will discourage companies from selling their products and services in certain States, burdening interstate commerce and reducing consumer choice.

2. The sliding-scale approach would expand plaintiffs' ability to engage in abusive forum-shopping.

The sliding-scale approach also would impose new burdens on courts, by enabling plaintiffs' law-

yers to shop aggressively for plaintiff-friendly forums and bring as many claims as possible there.

In pharmaceutical litigation, plaintiffs' counsel often seek to join together claims from plaintiffs across the country in particular "magnet jurisdictions" that are viewed as especially plaintiff-friendly. Before this Court decided *Daimler*, plaintiffs seeking to bring suit in such "magnet jurisdictions" would rely on expansive theories of general jurisdiction, arguing that the defendant companies did a high volume of business there.

Daimler foreclosed that approach by holding that even a "substantial, continuous, and systematic course of business" by the defendant is not enough to support general jurisdiction. 134 S. Ct. at 761 (internal quotation marks omitted). But the approach applied by the majority below circumvents *Daimler* and opens a new forum-shopping avenue for plaintiffs' lawyers, allowing the filing of a limitless number of claims in a desired forum as long as there is some nebulous parallelism between the claims and the defendant's forum contacts. See Charles W. Rhodes & Cassandra Burke Robertson, *Toward a New Equilibrium in Personal Jurisdiction*, 48 U.C. Davis L. Rev. 207, 242 (2014) (rejecting the notion of "specific jurisdiction in every forum in which the defendant conducts continuous and systematic forum activities that are sufficiently similar to the occurrence in dispute," which "would give the plaintiff the choice of essentially every state for proceeding against a national corporation").

This Court should not permit such blatant gamesmanship. As this Court has recently observed, "public perception of judicial integrity"—and, by extension, of the integrity of the entire court system—

"'is a state interest of the highest order.'" *Williams-Yulee* v. *Fla. Bar*, 135 S. Ct. 1656, 1666 (2015) (quoting *Caperton* v. *A.T. Massey Coal Co.*, 556 U.S. 868, 889 (2009)).

That public perception would be undermined if the public believed, rightly or wrongly, that plaintiffs and plaintiffs' lawyers could ensure their desired outcome by shopping for and filing in particular forums. The Court therefore should not endorse the approach to specific jurisdiction taken by the majority below, which gives free rein to forum-shopping plaintiffs and all but guarantees that justice will no longer "satisfy the appearance of justice." *Offutt* v. *United States*, 348 U.S. 11, 14 (1954).

C. Permitting Specific Jurisdiction On The "Sliding Scale" Theory Infringes Important Federalism Interests By Allowing A State To Extend Its Authority Into The Legitimate Domain Of Sister States.

Finally, the sliding-scale approach violates basic principles of federalism.

Tying a forum State's authority to assert personal jurisdiction to a relationship between the plaintiff's claim and the defendant's activity in the forum State "ensure[s] that the States[,] through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *World-Wide Volkswagen*, 444 U.S. at 292. By expanding the scope of specific jurisdiction to encompass claims arising wholly from out-of-State conduct, the sliding-scale theory "infringe[s] directly on [other states'] sovereign prerogative to determine what liabilities [defendants] should bear for actions

in [their] borders." Pet. App. 83a (Werdegar, J., dissenting).

States have no legitimate interest in asserting specific jurisdiction so expansively and regulating conduct that occurred exclusively in other States. Rather, the State's interest is properly limited to adjudicating claims based on in-State activities.

As the dissent below explained, "Where the conduct sued upon did not occur in California, was not directed at individuals or entities in California, and caused no injuries in California or to California residents, neither our state's interest in regulating conduct within its borders nor its interest in providing a forum for its residents to seek redress for their injuries is implicated." *Id.* at 86a (citations omitted). Strictly enforcing the relatedness requirement thus maintains appropriate limits on specific jurisdiction—allowing States to protect their citizens and control conduct within their borders while preventing them from adjudicating claims that should be heard elsewhere.

This Court should therefore reject the sliding-scale approach and hold that specific jurisdiction is not permissible when the plaintiff's claim arose independently from the defendant's activity within the forum State.

CONCLUSION

The judgment of the California Supreme Court should be reversed.

Respectfully submitted.

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MARCH 2017